

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2876 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

TULSIDAS KISHANLAL SOLANKI

Versus

SMC

Appearance:

MS NANDINI JOSHI for Petitioner
MR PRASHANT G DESAI for Respondent No. 1
MS ROOPAL R PATEL for Respondent No. 3
RULE SERVED BY DS for Respondent No. 4

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 29/07/98

ORAL JUDGEMENT

Heard the learned Advocates for the parties.

At the material time, the petitioner was working as Community Organiser. He was served with Memo dated 18.8.1990 that he had remained absent for 144 days in the

year 1989. It was also stated that he remained present only for five days during iFebruary, 1990. Suffice it to say that punishment of dismissal from service was inflicted on him. The petitioner filed Appeal against the said order to the Standing Committee under Section 56(4) of the BPMC Act. The Standing Committee, by Resolution No.1558 dated 1.11.1993, allowed the Appeal and set aside the order passed by the Assistant Commissioner. The Standing Committee directed to reinstate the petitioner and to treat the period of absence as 'on leave'. If there is no leave, by regularising the same as leave without pay and further resolved to give all benefits as admissible in service to him by treating as if he was never terminated from service. The grievance voiced by the petitioner is that inspite of repeated representations, the order of the Standing Committee has not been complied with. On the other hand, it is contended by Mr P G Desai, learned Advocate for the respondent that the Resolution No.634 dated 17.12.1994, of the Standing Committee was set aside by the Administrator, who at the relevant time, was exercising the powers of the Corporation. He submits that the Corporation is the authority immediately superior to the Standing Committee.

3. Section 56 of the BPMC Act provides for imposition of penalties on municipal officers and servants. Sub-section (4) of section 56 provides for remedy of appeal in case of imposition of penalty, to the authority immediately superior to the authority which imposed the penalty. Proviso added to sub-section (iv) provides that for the purpose of this sub-section, the Standing Committee shall be deemed to be the authority immediately superior to the Commissioner and the Corporation shall be the authority immediately superior to the Standing Committee. A just reading of the provision of course gives an impression as has been contended by Mr P G Desai. However, a careful reading of the proviso indicates that in case the original authority which has imposed the penalty is the Commissioner, then, in that eventuality, the Appeallate Authority shall be the Standing Commiteee. However, in a case where the original authority imposing penalty is the Standing Committee, in that case, the Corporation shall be the authority immediately superior. It may be noticed that sub-clause (iv) does not provide for a second appeal. Therefore, the provision is to be construed keeping in view that there is only one remedy of appeal. Thus, where the decision has been taken by the Commissioner, the immediate superior authority is the Standing Committee. There is no further remedy to the

Corporation. In view of this, the corporation has not been conferred any power where the Standing Committee has taken the decision as Appellate Authority. In the instant case, the original decision is of the Asstt. Commissioner/Commissioner and the appellate power has been exercised by the Standing Committee. In view of this, exercising the administrative powers of the Corporation has no jurisdiction to exercise powers of the Appellate Authority namely, the Standing Committee.

4. In view of the aforesaid, this Special Civil Application is allowed. The interim order dated 17.6.1998 granted by this Court to comply with the directions of the Standing Committee by reinstating the petitioner forthwith is confirmed. The petitioner shall also to be paid the arrears of salary in terms of the decision of the Standing Committee dated 23.10.1993 within a period of three months from the date of receipt of the writ.

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msp.